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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

BRANDY ESKRA, Petitioner and Appellant, v. STEVE ESKRA, et al. Objectors and Respondents.

A158136 (Humboldt County Super. Ct. No. PR180086)

Brandy Eskra (Brandy) filed a probate petition seeking to be appointed the personal representative of her late husband's estate. The trial court denied her petition based on a premarital agreement that waived Brandy's interests in her husband's separate property, and the court appointed his parents co-administrators of the estate. Brandy appeals, contending that the trial court erred in refusing to allow her to introduce extrinsic evidence concerning the premarital agreement. We conclude that Brandy was entitled to introduce extrinsic evidence in support of her argument that she and her late husband mistakenly believed the agreement would apply only in the event of divorce or dissolution of the marriage, rather than upon death. We therefore reverse.

BACKGROUND

A.

Brandy married Scott Eskra on May 2, 2015. In April, shortly before their wedding date, she learned that Scott wanted a premarital agreement. As a result, Brandy engaged the services of attorney Tracy Rain and first met with her on April 24. On May 1, Brandy and Scott signed the final agreement at the office of Scott's attorney. Scott's attorney was present at the signing, along with a notary, but Brandy's attorney was not present.

In the 11-page agreement, Brandy and Scott "acknowledge to each other that each does not now claim any right or interest in the present or future income, property, or assets of the other." The agreement provides that "[t]he parties desire that all property owned by either of them be preserved as the separate property of each party. All property acquired by either party by gift or inheritance during their marriage, or by earnings, will be entirely his or her separate property." The agreement specifies that the parties intend to occupy Scott's home, that any payments made by Brandy toward that property would become Scott's separate property, and that Brandy would not be reimbursed for any such payments "in the event of the parties' separation or divorce, or upon the death of either party." In addition, the agreement expressly waives, on behalf of each party, "all right, claim, or interest, . . . that he or she may acquire in the separate property of the other by reason of the marriage, including, without limitation: [¶] 1) Community property rights; [¶] 2) The right to a family allowance; [¶] 3) The right to a probate homestead (a homestead set apart by the court for the use of a surviving husband or wife and the

minor children out of the common property or out of the real estate belonging to the deceased); [¶] 4) Right to have exempt property set aside[.]” Further, “[n]othing contained in this Agreement shall constitute a waiver by either party of any bequest or devise that the other party may choose to make to him or her by Will or Codicil or Trust executed after the date of this Agreement.” The Agreement “shall be binding upon the parties to this Agreement and their respective heirs, trustees, successors, executors, administrators and assigns.” The agreement states that both parties were represented by independent counsel. The agreement contained a standard integration clause stating that the agreement “contains the entire understanding and agreement of the parties.”

B.

After Scott died in 2018, Brandy petitioned to be appointed personal representative to administer his estate. Scott’s ex-wife, Stephanie Simera, filed an objection in her capacity as guardian ad litem for Simera and Scott’s minor daughter. Scott’s parents, Steve Eskra (Steve) and Catherine Grace, filed a competing petition for appointment as personal representatives. Simera, Steve, and Grace filed a motion in limine to exclude extrinsic evidence concerning the agreement. Brandy raised several issues in her opposition, including an argument that she could introduce extrinsic evidence (prior drafts of the agreement; emails of counsel) that the parties intended to change the agreement to grant Brandy various rights in the event that Scott died, but the parties mistakenly neglected to make some of the changes.

The trial court held a hearing, during which Brandy testified. According to Brandy, “I was fine with signing [the agreement]. I had never known that a premarital agreement had anything to do with death. I was told it was in the event of a divorce. My husband had just got out of a terrible marriage and I was totally fine with signing that considering what he had went through with . . . his ex-wife trying to take his house.”

The trial court granted the motion in limine, reasoning that Brandy was not permitted to introduce extrinsic evidence to contradict the terms of the agreement. Further, the court held that the premarital agreement is enforceable. In addition, the court denied Brandy’s petition and granted the competing petition for probate, appointing Steve and Grace as co-administrators of the estate.

DISCUSSION

Brandy asserts that the trial court erred in granting Steve and Catherine’s motion to exclude extrinsic evidence because the evidence she sought to introduce was admissible for purposes of proving either a latent ambiguity or a mistake – a question we review independently. (See *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955.) Regarding latent ambiguity, we agree with the trial court that the language of the agreement is not reasonably susceptible to the interpretation advanced by Brandy. Regarding mistake, however, we conclude that the trial court erred in barring extrinsic evidence.

Premarital agreements are subject to the general rules of contract interpretation. (See *In re Marriage of Bonds* (2000) 24 Cal.4th 1, 13.) Under the rule against parol evidence, “[t]he court generally

may not consider extrinsic evidence of any prior agreement or contemporaneous oral agreement to vary or contradict the clear and unambiguous terms of a written, integrated contract.’” (*Brown v. Goldstein* (2019) 34 Cal.App.5th 418, 432; see also Code Civ. Proc., § 1856, subd. (a).) However, Brandy relies on two exceptions to that rule.

First, Brandy asserts that the trial court should have allowed her to put on evidence to show that the language of the agreement was ambiguous as to whether Brandy and Scott intended to retain their rights to spousal property upon death. The court may consider “‘extrinsic evidence not only to resolve a facial ambiguity but to determine the existence of and resolve a latent ambiguity.’” (See *Zissler v. Saville* (2018) 29 Cal.App.5th 630, 644 (*Zissler*); see also Code Civ. Proc., § 1856, subd. (g).) “‘An ambiguity is latent if the resort to extrinsic evidence reveals that what appears to be perfectly clear language is in fact susceptible of more than one reasonable interpretation.’” (*Zissler, supra*, at p. 644.) However, the extrinsic evidence is admissible only if offered “‘to prove a meaning to which the language of the instrument is reasonably susceptible.’” (*Ibid.*)

Here, the trial court concluded that the language of the agreement was not reasonably susceptible to Brandy’s interpretation, and we find no error in that ruling. The agreement states that “Brandy and Scott acknowledge to each other that each does not now claim *any* right or interest in the present or future income, property, or assets of the other.” (Italics added.) The agreement provides that “each party waives and relinquishes *all* right, claim, or interest, whether actual or contingent, in law and equity, that he or she may acquire in the separate property of the other by reason of the marriage, including,

without limitation” the enumerated rights. (Italics added.) Although Brandy contends that the parties intended the agreement only to apply in the event of divorce or dissolution of marriage, one of the enumerated rights expressly waived is the “right to a probate homestead (a homestead set apart by the court for the use of a surviving husband or wife and the minor children out of the common property or out of the real estate belonging to the deceased).” Another provision states that if Brandy contributes payments toward Scott’s separate real estate property, “Brandy will not be reimbursed for any such payments in the event of the parties’ separation or divorce, or upon death of either party.” Further, the agreement “shall be binding upon the parties to this Agreement and their respective heirs, trustees, successors, executors, administrators and assigns.” These provisions would have been superfluous if the agreement were entirely inapplicable in the event of one party’s death. The agreement is not reasonably susceptible to an interpretation that it is inapplicable in the event of death.

Brandy’s second argument, however, requires a different analysis. She contends that extrinsic evidence would show that the parties intended the agreement only to apply in the event of divorce or dissolution of marriage, but the agreement does not reflect this intent due to drafting errors. Code of Civil Procedure, section 1856, subdivision (e), provides, “[w]here a mistake or imperfection of the writing is put in issue by the pleadings, . . . evidence relevant to that issue” is not barred. (See also *Estate of Duke*, 61 Cal.4th 871, 889 (2015) (*Duke*) [“extrinsic evidence is admissible . . . to reform the writing to correct a mistake, even when the writing is intended to be a

complete and exclusive statement of the parties' agreement"]; *Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 526 [to determine whether a mistake occurred, "we consider the extrinsic evidence of the contracting parties' intent"].) Extrinsic evidence is admissible when the parties "intend one thing, but due to mistake or inadvertence, the written document does not reflect that intent." (*PV Little Italy, LLC v. MetroWork Condominium Assn.* (2012) 210 Cal.App.4th 132, 152.) The exception allowing extrinsic evidence to prove a mistake applies even where, as here, the terms of the writing are "unambiguous." (See *Duke, supra*, 61 Cal.4th at p. 898.)

Brandy offered to submit prior drafts and emails of counsel to show that the parties intended to reserve certain rights upon the death of the other spouse, and therefore they deleted waivers of those rights from the original draft. Brandy sought to introduce the evidence to show that the language of the final agreement mistakenly failed to preserve those rights in the event of death. The proper procedure was for the court to give "at least a preliminary consideration of all credible evidence offered to prove the intention of the parties." (*Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 39-40 (*Pacific Gas & E. Co.*); see also, e.g., *Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1351.)

Steve and Grace contend that the trial court correctly excluded Brandy's proffered evidence because she was unable to show mutual mistake, as opposed to her own unilateral mistake. But without considering the proffered evidence, it is impossible to know whether the evidence would show unilateral or mutual mistake. If Brandy's evidence establishes a unilateral mistake, it would be up to the trial

court in the first instance to determine its import. (See, e.g., *Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1673-1674 [unilateral mistake may result in rescission of contract in some circumstances].)

The trial court erred in declining to review the evidence to determine whether Brandy's allegation that the parties had made a mistake was factually supported. On remand, the court should provisionally receive the evidence for that limited purpose.

Because we reverse the trial court's judgment on this basis, we do not reach Brandy's remaining arguments on appeal.

DISPOSITION

The judgment is reversed. On remand, the trial court shall reverse its order granting the motion in limine, and provisionally accept Brandy's evidence to determine whether the parties had a mistaken belief concerning the meaning of the premarital agreement. (See *Pacific Gas & E. Co.*, *supra*, 69 Cal.2d at pp. 39-40.) Brandy is entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3), (4).)

BURNS, J.

We concur:

JONES, P.J.

NEEDHAM, J.

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